

**EXHIBIT E**

**State Court Action Complaint**

1 RUTAN & TUCKER, LLP  
 2 William H. Ihrke (State Bar No. 204063)  
 3 bihrke@rutan.com  
 4 Robert O. Owen (State Bar No. 126105)  
 5 bowen@rutan.com  
 6 Travis Van Ligten (State Bar No. 301715)  
 7 tvanligten@rutan.com  
 8 Samantha Lamm (State Bar No. 203094)  
 9 slamm@rutan.com  
 10 18575 Jamboree Road, 9th Floor  
 11 Irvine, CA 92612  
 12 Telephone: 714-641-5100  
 13 Facsimile: 714-546-9035

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 15 Attorneys for Plaintiff  
 16 CITY OF LA QUINTA, a California Municipal corporation  
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## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## FOR THE COUNTY OF RIVERSIDE

CITY OF LA QUINTA, a California Municipal Corporation,

Plaintiff,

v.

SILVERROCK DEVELOPMENT COMPANY, LLC, a Delaware limited liability company; THE ROBERT GREEN COMPANY, a California corporation; RGC LA QUINTA II, LLC, a Delaware limited liability company; SILVERROCK PHASE I, LLC, a Delaware limited liability company; SILVERROCK LAND II, LLC, a Delaware limited liability company; SILVERROCK LODGING, LLC, a Delaware limited liability company; SILVERROCK LIFESTYLE RESIDENCES, LLC, a Delaware limited liability company; SILVERROCK LUXURY RESIDENCES, LLC, a Delaware limited liability company; RGC PA789, LLC, a Delaware limited liability company; AXIA TALUS, LLC, a Utah limited liability company; ROBERT S. GREEN JR., an individual; FRED SCHUSTER, an individual; PAREKH FAMILY TRUST; MCCOY REVOCABLE TRUST; BILLINGS REALTY, LLC; GEORGE J. HEUSER REVOCABLE TRUST; ERIC BERANEK; HECTOR DANIEL BERANEK; TRAUB FAMILY REVOCABLE TRUST DATED JANUARY 22, 2015; SVR CAPITAL TRUST; KURTIN FAMILY TRUST; KENNETH AND THERESA GREEN

Case No.

Assigned for All Purposes to:  
 Department:

**COMPLAINT FOR:**

- 1. BREACH OF CONTRACT**
- 2. FRAUD**
- 3. SLANDER OF TITLE**
- 4. QUIET TITLE**
- 5. DECLARATORY AND INJUNCTIVE RELIEF**

[Filed Concurrently with Plaintiff's Compendium of Exhibits]

1 FAMILY TRUST; DUCLOS FAMILY  
2 REVOCABLE TRUST; BRYAN D. HOLKER  
3 IRA; DIANE CIMARUSTI; CLAIRE  
4 FRUHWIRTH TRUST; JASON PARR;  
5 KEVIN AND LINDY WELK; LTMDP  
6 LIVING FAMILY TRUST; ERIC LEITSTEIN;  
7 BILL AND SUSAN HOEHN FAMILY  
8 TRUST; RICHARD & LEHN GOETZ;  
9 JONATHAN P. FREDRICKS; MACK  
10 REVOCABLE TRUST; and DOES 1-50,  
11 inclusive,

12 Defendants.

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Plaintiff City of La Quinta (the “City” or “Plaintiff”), alleges as follows:

## **INTRODUCTION**

1. Plaintiff is a municipal corporation and charter city organized under the laws of the State of California and brings this action in that capacity.

5       2. Plaintiff is informed and believes, and on that basis alleges that Defendant  
6 Silverrock Development Company, LLC (“SDC”) is a Delaware limited liability company  
7 registered to do and doing business in the State of California, and, more particularly, in the County  
8 of Riverside.

9       3. Plaintiff is informed and believes, and on that basis alleges that Defendant the  
10 Robert Green Company (“Robert Green Company”) is a California corporation registered to do  
11 and doing business in the State of California, and, more particularly, in the County of Riverside,  
12 and the manager of SDC.

13       4. Plaintiff is informed and believes, and on that basis alleges that Defendant RGC La  
14 Quinta II, LLC (“RGC”) is a Delaware limited liability company registered to do and doing  
15 business in the State of California, and, more particularly, in the County of Riverside, and the co-  
16 manager of SDC.

17       5.      The City is informed and believes and thereupon alleges that Defendant Robert S.  
18 Green, Jr. (“Green”) is the President and Chief Executive Officer of RGC and that Green controls  
19 SDC and its affiliates as his alter egos.<sup>1</sup>

20       6.       The City is informed and believes and thereupon alleges that Defendant Fred  
21 Schuster (“Schuster”) is the Executive Vice President and Chief Investment Officer of RGC and  
22 that Schuster controls SDC and its affiliates as his alter egos.

23       7. Plaintiff is informed and believes, and on that basis alleges that Defendant  
24 Silverrock Phase I, LLC (“SRPI”) is a Delaware limited liability company registered to do and  
25 doing business in the State of California, and, more particularly, in the County of Riverside, and is

<sup>27</sup> <sup>1</sup> “SDC and its affiliates” refer to SDC, Robert Green Company, Green, Schuster, RGC, SRPI,  
<sup>28</sup> SRL 2, SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789, and any other affiliates of SDC, as  
well their directors, officers, employees, agents and assigns as each of Defendants are alter egos of  
one another.

1 an affiliate of SDC that is either owned or controlled, or both, by SDC.

2       8. Plaintiff is informed and believes, and on that basis alleges, that Defendant  
 3 Silverrock Land II, LLC (“SRL 2”) is a Delaware limited liability company registered to do and  
 4 doing business in the State of California, and, more particularly, in the County of Riverside, and is  
 5 an affiliate of SDC that is either owned or controlled, or both, by SDC.

6       9. Plaintiff is informed and believes, and on that basis alleges, that Defendant  
 7 Silverrock Lodging, LLC (“SR Lodging”) is a Delaware limited liability company registered to do  
 8 and doing business in the State of California, and, more particularly, in the County of Riverside,  
 9 and is an affiliate of SDC that is either owned or controlled, or both, by SDC.

10      10. Plaintiff is informed and believes, and on that basis alleges, that Defendant  
 11 Silverrock Lifestyle Residences, LLC (“SR Lifestyle”) is a Delaware limited liability company  
 12 registered to do and doing business in the State of California, and, more particularly, in the County  
 13 of Riverside, and is an affiliate of SDC that is either owned or controlled, or both, by SDC.

14      11. Plaintiff is informed and believes, and on that basis alleges, that Defendant  
 15 Silverrock Luxury Residences, LLC (“SR Luxury”) is a Delaware limited liability company  
 16 registered to do and doing business in the State of California, and, more particularly, in the County  
 17 of Riverside, and is an affiliate of SDC that is either owned or controlled, or both, by SDC.

18      12. Plaintiff is informed and believes, and on that basis alleges, that Defendant RGC  
 19 PA789, LLC (“RGC/PA789”) is a Delaware limited liability company registered to do and doing  
 20 business in the State of California, and, more particularly, in the County of Riverside, and is an  
 21 affiliate of SDC that is either owned or controlled, or both, by SDC.

22      13. Plaintiff is informed and believes, and on that basis alleges that the Robert Green  
 23 Company is the Manager for SDC, RGC, SRPI, SRL 2, SR Lodging, SR Lifestyle, SR Luxury,  
 24 RGC/PA789, and any other affiliates of SDC. Plaintiff further is informed and believes, and on  
 25 that basis alleges that Green is the President and Chief Executive Officer of SDC, RGC, SRPI,  
 26 SRL 2, SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789, and any other affiliates of SDC.

27      14. As used in this Complaint, the term “Developer” or “Defendant Developer” shall  
 28 mean and refer to the Developer entities SDC, Robert Green Company, Green, Schuster, RGC,

1 SRPI, SRL 2, SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789, and any other affiliates of  
 2 SDC, as well their directors, officers, employees, agents and assigns.

3       15. There exists, and at all times herein mentioned there existed, a unity of interest and  
 4 ownership between Defendants SDC, Robert Green Company, Green, Schuster, RGC, SRPI,  
 5 SRL 2, SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789, and any other affiliates of SDC, as  
 6 well their directors, officers, employees, agents and assigns such that any individuality and  
 7 separateness between Defendants have ceased, and these entities and persons are alter egos for one  
 8 another. Adherence to the fiction of the separate existence of Defendants as distinct entities would  
 9 permit abuse of the limited liability company privilege, sanction fraud, and promote injustice.

10      16. Plaintiff is informed and believes, and on that basis alleges that Defendant Axia  
 11 Talus, LLC (“Axia”) is a Utah limited liability company, registered to do and doing business in  
 12 the State of California, and, more particularly, in the County of Riverside.

13      17. Plaintiff is informed and believes, and on that basis alleges that Defendant Parekh  
 14 Family Trust (“Parekh”) is either an individual or entity, doing business in the State of California,  
 15 and, more particularly, in the County of Riverside.

16      18. Plaintiff is informed and believes, and on that basis alleges that Defendant McCoy  
 17 Revocable Trust (“McCoy”) is either an individual or entity, doing business in the State of  
 18 California, and, more particularly, in the County of Riverside.

19      19. Plaintiff is informed and believes, and on that basis alleges that Defendant Billings  
 20 Realty, LLC, (“Billings Realty”) is a limited liability company, registered to do and doing  
 21 business in the State of California, and, more particularly, in the County of Riverside.

22      20. Plaintiff is informed and believes, and on that basis alleges that Defendant George  
 23 J. Heuser Revocable Trust (“Heuser”) is either an individual or entity, doing business in the State  
 24 of California, and, more particularly, in the County of Riverside.

25      21. Plaintiff is informed and believes, and on that basis alleges that Defendant Eric  
 26 Beranek (“Eric Beranek”) is either an individual or entity, doing business in the State of  
 27 California, and, more particularly, in the County of Riverside.

28      22. Plaintiff is informed and believes, and on that basis alleges that Defendant Hector

1 Daniel Beranek (“Hector D Beranek”) is either an individual or entity, doing business in the State  
 2 of California, and, more particularly, in the County of Riverside.

3       23. Plaintiff is informed and believes, and on that basis alleges that Defendant Traub  
 4 Family Revocable Trust Dated January 22, 2015 (“Traub Family Trust”) is either an individual or  
 5 entity, doing business in the State of California, and, more particularly, in the County of Riverside.

6       24. Plaintiff is informed and believes, and on that basis alleges that Defendant SVR  
 7 Capital Trust (“SVR Capital”) is either an individual or entity, doing business in the State of  
 8 California, and, more particularly, in the County of Riverside.

9       25. Plaintiff is informed and believes, and on that basis alleges that Defendant Kurtin  
 10 Family Trust (“Kurtin Family Trust”) is either an individual or entity, doing business in the State  
 11 of California, and, more particularly, in the County of Riverside.

12       26. Plaintiff is informed and believes, and on that basis alleges that Defendant Kenneth  
 13 and Theresa Green Family Trust (“Kevin/Theresa Green Family Trust”) is either an individual(s)  
 14 or entity, doing business in the State of California, and, more particularly, in the County of  
 15 Riverside.

16       27. Plaintiff is informed and believes, and on that basis alleges that Defendant Duclos  
 17 Family Revocable Trust (“Duclos”) is either an individual or entity, doing business in the State of  
 18 California, and, more particularly, in the County of Riverside.

19       28. Plaintiff is informed and believes, and on that basis alleges that Defendant Bryan  
 20 D. Holker IRA (“Holker IRA”) is either an individual or entity, doing business in the State of  
 21 California, and, more particularly, in the County of Riverside.

22       29. Plaintiff is informed and believes, and on that basis alleges that Defendant Diane  
 23 Cimarusti (“Cimarusti”) is either an individual or entity, doing business in the State of California,  
 24 and, more particularly, in the County of Riverside.

25       30. Plaintiff is informed and believes, and on that basis alleges that Defendant Claire  
 26 Fruhwirth Trust (“Fruhwirth”) is either an individual or entity, doing business in the State of  
 27 California, and, more particularly, in the County of Riverside.

28       31. Plaintiff is informed and believes, and on that basis alleges that Defendant Jason

1 Parr (“Parr”) is either an individual or entity, doing business in the State of California, and, more  
 2 particularly, in the County of Riverside.

3       32. Plaintiff is informed and believes, and on that basis alleges that Defendant Kevin  
 4 and Lindy Welk (“Welk”) is either an individual(s) or entity, doing business in the State of  
 5 California, and, more particularly, in the County of Riverside.

6       33. Plaintiff is informed and believes, and on that basis alleges that Defendant LTMDP  
 7 Living Family Trust (“LTMDP”) is either an individual or entity, doing business in the State of  
 8 California, and, more particularly, in the County of Riverside.

9       34. Plaintiff is informed and believes, and on that basis alleges that Defendant Eric  
 10 Leitstein (“Leitstein”) is either an individual or entity, doing business in the State of California,  
 11 and, more particularly, in the County of Riverside.

12       35. Plaintiff is informed and believes, and on that basis alleges that Defendant Bill and  
 13 Susan Hoehn Family Trust (“Hoehn”) is either an individual(s) or entity, doing business in the  
 14 State of California, and, more particularly, in the County of Riverside.

15       36. Plaintiff is informed and believes, and on that basis alleges that Defendant Richard  
 16 & Lehn Geotz (“Goetz”) is either an individual(s) or entity, doing business in the State of  
 17 California, and, more particularly, in the County of Riverside.

18       37. Plaintiff is informed and believes, and on that basis alleges that Defendant Jonathan  
 19 P. Fredricks (“Fredricks”) is either an individual(s) or entity, doing business in the State of  
 20 California, and, more particularly, in the County of Riverside.

21       38. Plaintiff is informed and believes, and on that basis alleges that Defendant Mack  
 22 Revocable Trust (“Mack Trust”) is either an individual(s) or entity, doing business in the State of  
 23 California, and, more particularly, in the County of Riverside.

24       39. Plaintiff is informed and believes, and on that basis alleges that Defendants Axia,  
 25 Parek, McCoy, Billings Realty, Heuser, Eric Beranek, Hector D Beranek, Traub Family Trust,  
 26 SVR Capital, Krutin Family Trust, Kevin/Theresa Green Family Trust, Duclos, Holker IRA,  
 27 Cimarusti, Fruhwirth, Parr, Welk, LTMDP, Leitstein, Hoehn, Goetz, Fredricks, and Mack Trust  
 28 (collectively, referred to as the “Unknown and Unapproved Equity Investors”) were at some time,

1 prior to July 1, 2024, investors with and/or contributors of funds to Developer.

2       40. Plaintiff is unaware of the true names and capacities of Defendants Does 1 through  
 3 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
 4 this Complaint to show the true names and capacities of such fictitiously named defendants when  
 5 the same have been ascertained or upon proof at the trial of this matter. Plaintiff is informed and  
 6 believes, and based thereon alleges, that each of the fictitiously named defendants is legally  
 7 responsible for the events and damages alleged herein.

8       41. Plaintiff is informed and believes, and based thereon alleges, that at all relevant  
 9 times, certain defendants were acting as the agents, servants, employees, alter egos, successors or  
 10 predecessors-in-interest, of others of the defendants, and were acting within the course and scope  
 11 of such relationship, with the knowledge, express or implied, of each such other named defendant.

#### **JURISDICTION AND VENUE**

13       42. Jurisdiction and venue is proper in this Court under Code of Civil Procedure  
 14 sections 392 and 760.050(a) because the real property that is the subject of this action is located in  
 15 the County of Riverside, State of California.

16       43. Jurisdiction and venue is further proper in this Court pursuant to Section 502 of the  
 17 Original PSDA (as defined below), which states that actions to enforce the PSDA (as defined  
 18 below) can be brought in the Superior Court of the County of Riverside, California. The MOU (as  
 19 defined below) also states in Section 6.1 that this Court “shall have exclusive jurisdiction of any  
 20 litigation between the parties concerning this MOU.”

#### **FACTUAL BACKGROUND**

22       44. The City owned approximately 525 acres of land within the City of La Quinta  
 23 generally referred to and known as the “SilverRock Resort Area” and subject to a Specific Plan  
 24 adopted by the La Quinta City Council and enforceable as a land use governing document  
 25 pursuant to the Planning and Zoning Law, California Government Code section 65000 *et seq.*

#### **The Original PSDA and Development Agreement**

27       45. On or about November 19, 2014, the City and SDC entered into a Purchase, Sale  
 28 and Development Agreement (the “Original PSDA”) wherein the City agreed to convey to SDC,

1 and SDC agreed to purchase, specified “Parcels” and “Planning Areas” (or “PAs”) of real property  
 2 in the SilverRock Resort Area, consisting of what was referred to as the “Phase 1 Property” and  
 3 “Phase 2 Property” in the Original PSDA. A true and correct copy of the Original PSDA (without  
 4 exhibits) is attached to the Compendium of Exhibits (“COE”) as **Exhibit 1**. The COE is filed  
 5 concurrently with this Complaint.

6       46. In addition to agreeing to purchasing and owning specified Parcels with  
 7 corresponding Project Areas, SDC agreed to construct a destination resort, residential and  
 8 commercial project, and related public infrastructure improvements, consisting of “Project  
 9 Components” as described in the Original PSDA and briefly summarized below:

- 10           a. A “*Luxury Hotel*” (identified as PA 2 (see, Original PSDA, Attachment  
                   11 No. 2 [Site Map])) which means the Project Component that consists of  
                   12 Developer’s construction and subsequent operation of an upscale, luxury,  
                   13 full-service single-story hotel containing not less than one hundred twenty  
                   14 (120) luxury hotel rooms, that offers luxury amenities, full service  
                   15 accommodations, a full-service sit-down restaurant, a first class spa and  
                   16 fitness facility, and pools, all so further described in the Scope of  
                   17 Development and Specific Plan;
- 18           b. A “*Luxury Branded Residential Development*” (identified as PA 3 (see,  
                   19 Original PSDA, Attachment No. 2 [Site Map])) which means the Project  
                   20 Component that consists of Developer’s construction of approximately  
                   21 thirty-five (35) luxury single-family detached Resort Residential Dwelling  
                   22 Units;
- 23           c. A “*Lifestyle Hotel*” (identified as PA 5 (see, Original PSDA, Attachment  
                   24 No. 2 [Site Map])) which means the Project Component that consists of  
                   25 Developer’s construction and subsequent operation of a modern-style hotel  
                   26 containing not less than a sufficient number of hotel guest rooms that, when  
                   27 added to the number of hotel guest rooms at the Luxury Hotel, will result in  
                   28 the Project having an aggregate of at least three hundred forty (340) total

hotel guest rooms, and providing food and beverage services, a pool, a surface parking lot, and other related amenities;

- d. A “*Lifestyle Branded Residential Development*” (identified as PA 6 (see, Original PSDA, Attachment No. 2 [Site Map])) which means the Project Component that consists of Developer’s construction of approximately sixty (60) one and/or two-story luxury, condominium-style Resort Residential Dwelling Units that would be developed and subsequently operated in conjunction with the Lifestyle Hotel;
  - e. A “*Conference and Shared Service Facility*” (identified as PA 4 (see, Original PSDA, Attachment No. 2 [Site Map])) which means the Project Component that consists of Developer’s development and subsequent operation of a conference and shared service facility containing space designed and designated for conferences and banquets, back-of-house support services, and management function space shared by the Lifestyle Hotel and Luxury Hotel, and a surface parking lot, all as further described in the Scope of Development and Specific Plan;
  - f. A “*Permanent Golf Clubhouse*” (identified as PA 10A (see, Original PSDA, Attachment No. 2 [Site Map])) which means the Project Component that consists of Developer’s development of a permanent public clubhouse to serve the Golf Course;
  - g. A “*Promenade Mixed-Use Village*” (identified as PAs 7 and 9 (see, Original PSDA, Attachment No. 2 [Site Map])) which means the Project Component consisting of Developer’s development of up to two hundred twenty-five thousand (225,000) salable square feet of residential space containing between one hundred ten (110) and two hundred twenty-five (225) Resort Residential Dwelling Units, together with commercial space comprising between twelve thousand nine hundred (12,900) and forty thousand (40,000) square feet of mixed-use space comprised of permanent retail and

1                   seasonable stand-alone “pop-up” space, all as further described in the Scope  
 2                   of Development and Specific Plan;

- 3                   h. A “*Resort Residential Village*” (identified as PA 8 (see, Original PSDA,  
 4                   Attachment No. 2 [Site Map])) which means the Project Component that  
 5                   consists of Developer’s development and subsequent operation of  
 6                   approximately one hundred sixty (160) Residential Dwelling Units, an on-  
 7                   site amenity center consisting of a clubhouse and a reception and concierge  
 8                   desk, all as further described in the Scope of Development and Specific  
 9                   Plan;
- 10                  i. “*Master Site Infrastructure Improvements*” or “*MSIP*” which means the  
 11                 Project Component consisting of Developer’s construction and installation  
 12                 of all of the backbone infrastructure improvements required to serve the  
 13                 respective Project Components, including those identified in Subparagraphs  
 14                 (a)-(h) above and their respective Planning Areas; and
- 15                  j. A “*Golf Course Realignment*” which means the Project Component that  
 16                 consisted of Developer’s realignment of certain portions of the existing  
 17                 Gold Course (as defined in the PSDA) to facilitate the development of the  
 18                 Luxury Hotel and Luxury Branded Residential Project Components and  
 19                 affecting those Project Areas pursuant to the PSDA and other project  
 20                 approvals; Developer has completed the Golf Course Realignment Project  
 21                 Component, and the City retained ownership of, and still owns, fee title to  
 22                 all of the real property that consists of the Golf Course (PA 1 and covering  
 23                 approximately 179 acres of the SilverRock Resort Area).

24                  47. Pursuant to the Original PSDA, the original Phase 1 Property consisted of the  
 25                 “Luxury Hotel” and the “Luxury Branded Residential Development,” and the original Phase 2  
 26                 Property, consisted of the “Lifestyle Hotel” and the “Lifestyle Branded Residential Development,”  
 27                 among other specified Project Components.

28                  48. Concurrent with the Original PSDA, on or about November 19, 2014, the City and

1 SDC entered into Development Agreement 2014-1001 (the “Development Agreement”) pursuant  
2 to state law (California Government Code section 65864 *et seq.* and referred to as the “Statutory  
3 Development Agreement Law”), vesting certain development obligations with SDC and  
4 subjecting SDC to the City’s rights and oversight for those portions of the SilverRock Resort Area  
5 to be conveyed to SDC.

6       49. The Development Agreement required SDC to develop the Planning Areas and  
7 Project Components in accordance with the PSDA. The Development Agreement specifies that  
8 approximately 145 acres of the total SilverRock Resort Area would be conveyed to SDC, covering  
9 Planning Areas (PAs) 2, 3, 4, 5, 6, 7, 8, 9, and portion of 10A, and corresponding parcels of  
10 property with those Planning Areas (see, Development Agreement, Recital E & Exhibits A & B).  
11 At the time the Development Agreement was recorded, the SilverRock Resort Area was  
12 subdivided by then-existing Parcel Map No. 33367, and the entire SilverRock Resort Area  
13 consisted of Parcels 1-22 and Parcels A-N of Parcel Map 33367. Pursuant to the State  
14 Development Agreement Law, the Development Agreement was adopted by La Quinta City  
15 Council Ordinance No. 520 and recorded in the Official Records for Riverside County, California  
16 (“Recorder’s Office”) on December 18, 2014, as Instrument No. 2014-0484106.

17       50. The recorded Development Agreement runs with the land and places all parties on  
18 constructive notice of those terms and conditions. Indeed, the Original PSDA was incorporated by  
19 reference into the Development Agreement, and where there is a conflict between the  
20 Development Agreement and the Original PSDA, the Original PSDA and any amendments to the  
21 Original PSDA would control. (Development Agreement, § 2.1.2; Original PSDA, § 612.) A true  
22 and correct copy of Ordinance No. 520 and the recorded Development Agreement is attached in  
23 the COE as **Exhibit 2**.

## **Amendments to the PSDA**

25        51. Pursuant to the Original PSDA, the City and SDC had the authority to amend the  
26 Original PSDA by mutual agreement of the parties. Between October 29, 2015, and November  
27 16, 2023, the City and SDC entered into five amendments to the PSDA.

52. The City and SDC entered into Amendment No. 1 to the Original PSDA ("First

1 Amendment") dated October 29, 2015 to, among other things, update the Site Map and the various  
 2 timeframes within the Original PSDA.

3       53. On or about April 18, 2017, the City and SDC entered into Amendment No. 2 to  
 4 the Original PSDA ("Second Amendment") to modify from the Phase 1 Property and Phase 2  
 5 Property in the Original PSDA (and the associated phased development obligations) to the "Phase  
 6 1A Property" and the "Phase 1B Property," with corresponding "Phase 1A" and "Phase 1B," all as  
 7 defined in the Second Amendment. In addition to those properties, additional phased properties  
 8 were created: "Phase 1C (Golf Course) Property," "Phase 1D (Ahmanson Ranch House)  
 9 Property," and "Phase 1E (Perimeter Landscaping and Trails) Property." In connection with  
 10 proposed modifications by SDC for the phasing of development of the Project Components tied to  
 11 Planning Areas 2, 3, 4, 5, 6, 7, 8, 9, and portion of 10A (see above), the City processed and  
 12 approved, pursuant to the California Subdivision Map Act (Government Code section 66410 *et*  
 13 *seq.*, and referred to as the "Map Act") and applicable City law, Parcel Map No. 37207, which re-  
 14 subdivided the SilverRock Resort Area in the following parcels: Parcels 1-20 inclusive and Parcels  
 15 A-G inclusive. With the adoption of Parcel Map No. 37207 and approval of the Second  
 16 Amendment, the "Parcels" applicable to the respective "Planning Areas," for purposes of SDC's  
 17 development of the Project, were tied to the Parcels identified in Parcel Map No. 37207. A true  
 18 and correct copy of the Second Amendment and its Exhibits "A" through "D" (which exhibits  
 19 relate to Parcels and PAs for the Phase 1A Property and Phase 1B Property) is attached in the  
 20 COE as **Exhibit 3**.

21       54. As a part of the Second Amendment, the City and SDC modified the property  
 22 subject to the PSDA, as amended, to include the Phase 1A Property and Phase 1B Property, which  
 23 comprised approximately 44.6 acres and 84.2 acres, respectively, and approximately 130 acres  
 24 total. The Phase 1A Property consists of Parcels 1, 3, 4, 5, and 6 of Parcel Map No. 37207, and  
 25 Phase 1B Property consists of Parcels 7, 8, 9, 10, 11, and 12, and Parcels D, E, F, and G of Parcel  
 26 Map No. 37207. Together, the Phase 1A Property and Phase 1B Property correspond, with some  
 27 modifications to parcel boundaries and acreage, to the Project Components and acreage attached to  
 28 Planning Areas 2, 3, 4, 5, 6, 7, 8, 9, and portion of 10A from the Original PSDA. (See,

1 Paragraph 46, above; also see, Second Amendment, Recitals A, E & F, and Exhibit A [Site Map],  
 2 Exhibit B [Parcel Map No. 37207], Exhibit C [Legal Descriptions of Phase 1A Property and Phase  
 3 1B Property], and Exhibit D [Schedule of Acreage].)

4       55. By way of Grant Deed dated May 3, 2017, and recorded on November 6, 2017 as  
 5 Instrument No. 2017-0463950 in the Recorder's Office, as amended by an Amendment to Grant  
 6 Deed, recorded on November 28, 2018 as Instrument No. 2018-0464670 in the Recorder's Office,  
 7 the City conveyed the Phase 1A Property to SDC (the "Phase 1A Property Grant Deed"). True  
 8 and correct copies of Grant Deed and Amendment to Grant Deed that are the Phase 1A Property  
 9 Grant Deed are attached in the COE as **Exhibit 4**.

10       56. Thereafter, SDC assigned to SRPI (a Developer entity and affiliate of SDC), and  
 11 SRPI assumed from Developer, with the consent of the City, all of Developer's right, title, and  
 12 interest in the Phase 1A Property and the "Project Agreements" (which include the Development  
 13 Agreement and PSDA, as amended) as they pertain to the Phase 1A Property by an Assignment  
 14 and Assumption Agreement, recorded on November 28, 2018 as Instrument No. 2018-0465379 in  
 15 the Recorder's Office. SDC transferred to SRPI the Phase 1A Property by Grant Deed recorded  
 16 on November 28, 2018 as Instrument No. 2018-0464673 in the Recorder's Office.

17       57. On or about November 28, 2018, City and SDC entered into Amendment No. 3 to  
 18 the Original PSDA ("Third Amendment") to, among other things: (i) Set forth amended and  
 19 restated modifications for the development of the Phase 1A Property and set forth the terms and  
 20 conditions for the conveyance and sale of the Phase 1B Property from the City to SDC; (ii)  
 21 Modify the Master Site Infrastructure Improvements (MSII) (as defined in the Original PSDA)  
 22 Phasing Plan; (iii) Modify the Schedule of Performance; (iv) Specify assignment and assumptions  
 23 of interests from SDC (and any Developer entity); and (v) Incorporate provisions allowing for the  
 24 closing of the construction loan for the Phase 1A Property and Phase 1B Property. A true and  
 25 correct copy of the Third Amendment and its Exhibits "A" through "D" (which exhibits relate to  
 26 Parcels and PAs for the Phase 1A Property and Phase 1B Property) is attached in the COE as

27 **Exhibit 5**.

28       58. Pursuant to the Third Amendment, the City conveyed to SRPI the Phase 1B

1 Property by Grant Deed, dated November 28, 2018 and recorded on November 28, 2018, as  
 2 Instrument No. 2018-0464674 in the Recorder's Office (the "Phase 1B Property Grant Deed"). A  
 3 true and correct copy of the Phase 1B Property Grant Deed is attached in the COE as **Exhibit 6**.

4       59. On or about October 12, 2021, the City and SDC entered into Amendment No. 4 to  
 5 the Original PSDA ("Fourth Amendment") to, among other things: (i) Set forth terms and  
 6 conditions agreed upon by the City and SDC for the "Revised Capitalization" (as defined therein)  
 7 to cover the then-projected remaining costs, and financing of those costs, to develop the Phase 1A  
 8 Property and Phase 1B Property and all Project Components thereon (excluding the Promenade  
 9 Mixed-Use Village and Resort Residential Village); (ii) Modify the Master Site Infrastructure  
 10 Improvements (MSII) Phasing Plan; (iii) Modify the Schedule of Performance; (iv) Specify the  
 11 operation by a single hotel operator of short-term vacation rentals at the Luxury Branded  
 12 Residential Development and Lifestyle Branded Residential Development, as set forth therein; (v)  
 13 Modify the rebate reduction based on transient occupancy tax ("TOT") receipts; (vi) Identify  
 14 "Project Milestones" (as defined therein) of which failing to meet would result in increases to the  
 15 purchase price for the "Future Resort Property Phase" if and when there is an ability for SDC to  
 16 validly exercise the option to purchase the Future Resort Property (as set forth therein); (vii) If and  
 17 when a valid exercise by SDC of the option to purchase the Future Resort Property occurs, clarify  
 18 allowable uses on the Future Resort Property; and (viii) Incorporate provisions allowing for the  
 19 closing of the construction loan financing for the Phase 1A Property and Phase 1B Property, as  
 20 more particularly described in the Fourth Amendment. A true and correct copy of the Fourth  
 21 Amendment (without exhibits) is attached in the COE as **Exhibit 7**.

22       60. On or about November 16, 2023, the City and SDC entered into the most recent  
 23 amendment, Amendment No. 5 to the Original PSDA ("Fifth Amendment"). The Fifth  
 24 Amendment was entered into to avoid a default under the Original PSDA, as amended, and to  
 25 otherwise: (i) memorialize revised terms and conditions, agreed upon by the City and SDC, for  
 26 new "Recapitalization Lenders" (as defined therein) to revise and update the City-approved  
 27 financing for the development of the Phase 1A Property and Phase 1B Property, ***which required***  
 28 ***SDC close escrow on the updated, City-approved financing by June 30, 2024*** [emphasis added];

1 (ii) modify the Schedule of Performance and phasing of development; (iii) memorialize SDC's  
 2 missed Project Milestones (as identified therein); and (iv) make additional clarifications pertaining  
 3 to the PSDA. A true and correct copy of the Fifth Amendment and its Exhibit A (which exhibit  
 4 has the updated Schedule of Performance) is attached in the COE as **Exhibit 8**.

5       61. Pursuant to the Original PSDA, as amended through the Fifth Amendment, the  
 6 City's rights and remedies against SDC (and the Developer entities) have been and remain  
 7 cumulative, such that the exercise or non-exercise by the City of any right or remedy available at  
 8 law or in equity, including any right or remedy under the Original PSDA as amended, did not and  
 9 does not exclude the ability of the City to assert any other right or remedy against SDC (or any  
 10 Developer entity).

11       62. The Original PSDA, and the First, Second, Third, Fourth and Fifth Amendments  
 12 are referred collectively in this Complaint as the "PSDA." Pursuant to Section 605 of the Original  
 13 PSDA, which remains in full force and effect for all amendment including the Fifth Amendment,  
 14 the City Manager has the authority, on behalf of the City, to enter implementing agreements and  
 15 take other related contractual actions relating to the PSDA and the implementation and  
 16 development of the Project Components.

17       63. During the course of the amendments to the PSDA, SDC proposed to rename the  
 18 development as the "Talus" project, formerly referred to as the "SilverRock" project.

#### **Lot Line Adjustments, Final Tract Map, and Parcels**

##### **Comprising the "SDC-Owned Properties"**

21       64. As alleged above, the Second Amendment to the PSDA established Phase 1A and  
 22 Phase 1B for development of the project, with phasing for corresponding Planning Areas with the  
 23 Phase 1A Property and Phase 1B Property conveyances to SDC. After the conveyances of the  
 24 Phase 1A Property and Phase 1B Property, SDC applied for, and the City processed and approved  
 25 pursuant to the Map Act and applicable City law, a series of "Lot-Line Adjustments" or "LLAs"  
 26 so that Parcel boundary lines and acreage could further be modified to comply with the build-out  
 27 of PAs 2, 3, 4, 5, 6, 7, 8, 9, and portion of 10A, pursuant to the PSDA, as amended.

28       65. The Phase 1A Property covers the Planning Areas identified on the Site Map as

1 “PA 2,” PA 3,” and “PA 4,” and the corresponding parcels for these planning areas are identified  
 2 as Parcels 1, 3, 4, 5, and 6 from Parcel Map No. 37207. The following lists the Project  
 3 Components with corresponding acreage represented by each planning area for a total acreage of  
 4 approximately 44.6 acres:

- 5           a.       The Luxury Hotel is located in PA 2 and is approximately 16.4 acres.
- 6           b.       The spa site at the Luxury Hotel is located in PA 2 and is approximately 1.9  
 7 acres.
- 8           c.       The Luxury Hotel parking lot is located in PA 2 and is approximately 3.3  
 9 acres.
- 10          d.       The Luxury Branded Residential Development is located in PA 3 and is  
 11 approximately 13.9 acres.
- 12          e.       The Conference and Shared Service Facility is located in PA 4 and is  
 13 approximately 9.1 acres.

14         66.      The legal description of Phase 1A Property is as follows: Parcels 1, 3, 4, 5, and 6 of  
 15 Parcel Map No. 37207 per map filed in Book 242, Pages 72 through 87 inclusive, of Parcel Maps,  
 16 in the office of the County Record of Riverside County, State of California.

17         67.      The Phase 1B Property covers the Planning Areas identified as “PA 5,” “PA 6,”  
 18 “PA 7,” “PA 8,” “PA 9,” and “PA 10A-1” and the corresponding parcels for these Planning Areas  
 19 are identified as Parcels 7, 8, 9, 10, 11, and 12, and Parcels D, E, F, and G of Parcel Map No.  
 20 37207. The following lists the Project Components with corresponding acreage represented by  
 21 each planning area for a total acreage of approximately 84.2 acres:

- 22           a.       The Lifestyle Hotel is located in PA 5 and is approximately 11.4 acres.
- 23           b.       The Lifestyle Branded Residential Development is located in PA 6 and is  
 24 approximately 10.3 acres.
- 25           c.       The Promenade Mixed-Use Village (Part 1) is located in PA 7 and is  
 26 approximately 15.5 acres.
- 27           d.       The Resort Residential Village is located in PA 8 and is approximately 22  
 28 acres.

1                   e.         The Promenade Mixed-Use Village (Part 2) is located in PA 9 and is  
 2 approximately 13.5 acres.

3                   f.         The Permanent Golf Clubhouse is located in PA 10A-1 and is  
 4 approximately 7 acres.

5                 68.         The legal description of Phase 1B Property is as follows: Parcels 7, 8, 9, 10, 11, and  
 6 12, and Parcels D, E, F, and G, of Parcel Map No. 37207 per map filed in Book 242, Pages 72  
 7 through 87 inclusive of Parcel Maps, in the office of the County Record of Riverside County,  
 8 State of California. (See, Second Amendment, Recitals A, E & F, and Exhibit A [Site Map],  
 9 Exhibit B [Parcel Map No. 37207], Exhibit C [Legal Descriptions of Phase 1A Property and Phase  
 10 1B Property, among other legal descriptions], and Exhibit D [Schedule of Acreage]; Third  
 11 Amendment, Recitals F & G, and Exhibit A [Site Map], Exhibit B [Parcel Map No. 37207],  
 12 Exhibit C [simplified legal description for all parcels under Parcel Map No. 37207], and Exhibit D  
 13 [Schedule of Acreage].)

14                 69.         For the purpose of preparing and constructing the Project Components, Developer  
 15 submitted and the City approved four (4) Lot Line Adjustments (LLAs) to adjust acreage and  
 16 portions of Parcels and Parcel boundaries within and/or immediately adjacent to the Phase 1A  
 17 Property and Phase 1B Property, as more particularly described and depicted in those Lot Line  
 18 Adjustments (collectively, the “City-Approved LLAs”), which include (i) Lot Line Adjustment  
 19 (LLA) 2020-0005, (ii) Lot Line Adjustment (LLA) 2020-0007, (iii) Lot Line Adjustment (LLA)  
 20 2020-0010, and (iv) Lot Line Adjustment 2023-0003, all of which are public records on file with  
 21 the City and referenced in recorded instruments in the Recorder’s Office when such LLA touches  
 22 and concerns the legal description and boundary line for a Parcel that was conveyed to SDC by as  
 23 either part of the Phase 1A Property or Phase 1B Property, as applicable. True and correct copies  
 24 of LLAs 2020-0005, 2020-0007, 2020-0010, and 2023-0003 are attached in the COE as  
 25 **Exhibits 9, 10, 11, and 12, respectively.**

26                 70.         The real property, and any partial improvements thereon, that have been conveyed  
 27 by the City to SDC (or affiliate of SDC) as the Phase 1A Property and Phase 1B Property, as those  
 28 Parcels therein have been modified by one or more of the City-Approved LLAs, is collectively

referred to in this Complaint as the “**SDC-Owned Properties**.”

2       71. After processing the City-Approved LLAs, SCD applied for and the City processed  
3 and approved, pursuant to the Map Act and applicable City law, the Final Tract Map No. 37730,  
4 which is a subdivision of Parcel 1 and portion of Parcel 17 of Parcel Map. No. 37207. The Final  
5 Tract Map No. 37730 subdivided Parcel 1 and portion of Parcel 17 into Lots 1 through 29, and  
6 enumerated lettered lots for common area, where these lots would serve as custom homesites for  
7 the Luxury Branded Residential Development to be developed as part of PA 3. As such, Lots 1  
8 through 29 as shown on Final Tract Map No. 37730 are part of the SDC-Owned Properties.

9       72.     The dispute and causes of action that the City brings against the Defendants in this  
10 Complaint are a result of Developer's actions on and after July 1, 2024, after Developer fell into  
11 default under the Fifth Amendment, encumbering portions or all of the SDC-Owned Properties  
12 with unapproved and illegal mechanics liens and deeds of trust, as Developer failed to comply  
13 with the requirements under the PSDA to obtain ***prior*** City approval before obtaining any  
14 financing, whether by secured lender or by unsecured equity investor, in furtherance of the  
15 development and construction of the Project Components and corresponding Master Site  
16 Infrastructure Improvements (MSII), all as more specifically alleged in the Paragraphs below.

## **The PSDA's and Grant Deeds' Restrictions on Refinancing and the Recordation Of Deeds of Trust and/or Other Liens**

19       73. Due to the unique location of the SDC-Owned Properties, and the project to be  
20 developed on the SDC-Owned Properties, as confirmed by the PSDA itself, “[t]he qualifications  
21 and identity of Developer [SDC] as the developer and operator of high quality commercial resort  
22 developments are of particular importance to the City.” (Original PSDA, § 603.) To that end, the  
23 City and SDC agreed to a series of provisions in the PSDA to ensure that the City’s interest in this  
24 regard would be protected.

25       74. Section 603.1 of the Original PSDA generally prohibits the transfer of any of  
26 SDC's interest in the SDC-Owned Properties (defined generally as "Transfer[s]" in the PSDA),  
27 unless the proposed Transfer is either (a) approved by the City, "in its sole and absolute  
28 discretion," or (b) if the Transfer occurs as the result of a series of specifically defined transactions

1 and events. (See, Original PSDA, § 603.1(a)-(e); see also, Third Amendment, ¶ 5 [adding  
 2 additional Transfers for sales for Project Components on PAs 7, 8, and 9 if certain conditions are  
 3 met by SDC, and which have not been met].) Under the PSDA, only SDC (or City-approved  
 4 SDC-affiliated entity) may own any portion or all of the SDC-Owned Properties and perform the  
 5 contractual obligations for a highly complex phased development and construction project. No  
 6 other person or entity may own the fee interest to any portion or all of the SDC-Owned Properties  
 7 without the City's prior consent.

8       75.     As relevant here, the Original PSDA Section 603.1(b) and (c), restated by the Third  
 9 Amendment ("Section 603.1"), authorize: (i) an assignment to third parties, such as through the  
 10 grant of a deed of trust necessary for land acquisition, construction or permanent financing of the  
 11 project, or (ii) a Transfer to a lender that ultimately forecloses on such a deed of trust. However,  
 12 for a deed of trust to be valid, Section 603.1 expressly requires that such financing agreements  
 13 ***must be permitted*** pursuant to Section 311 of the Original PSDA.

14       76.     Section 311.1 of the Original PSDA grants the City the right to review and either  
 15 approve or disapprove of the financing that SDC (or any Developer entity) wishes to utilize in  
 16 connection with the development of the project. Pursuant to Section 311.1, ***SDC (or any***  
 17 ***Developer entity) has an affirmative obligation to notify the City of proposed financing and***  
 18 ***obtain the City's prior approval for that financing.*** Moreover, other provisions in the PSDA  
 19 specifically require SDC (or any Developer entity) to receive the City's prior approval of any  
 20 financing for the construction of the project on the SDC-Owned Properties.

21       77.     For instance, Section 211 of the PSDA requires SDC (or any Developer entity) to  
 22 obtain the City's prior approval for any financing of the Master Site Infrastructure Improvements  
 23 (MSII) that would attach to any Project Components, and Section 304.4 of the PSDA expressly  
 24 provides that SDC (or any Developer entity) may ***not*** obtain building permits for any Project  
 25 Component until such time as SDC has satisfied, among other enumerated conditions, with respect  
 26 to such Project Component, that the City has approved the Project Component Financing pursuant  
 27 to Section 311.1 and that financing has closed escrow and be available to SDC. As alleged above,  
 28 the requirements of Section 311.1, as with all terms and conditions in the PSDA, are incorporated

1 by reference into the Development Agreement and run with the land for the SDC-Owned  
 2 Properties.

3       78.     Additionally, both the Phase 1A Property Grant Deed and Phase 1B Property Grant  
 4 Deed also include a similar restriction on the Grantee's ability to transfer the properties at issue in  
 5 those grant deeds, by prohibiting any transfer of ownership of the properties, unless the transfer  
 6 was the result of a transaction or agreement that was approved pursuant to Section 603 of the  
 7 PSDA. (See Phase 1A Property Grant Deed, § 4; Phase 1B Property Grant Deed, § 4.) Further,  
 8 both grant deeds explicitly incorporate the PSDA, and its requirements, as covenants running with  
 9 the land. (See, Phase 1A Property Grant Deed, § 3; Phase 1B Property Grant Deed, § 3.)

10     79.     When the City has approved in the past or approves financing for future Project  
 11 Component and corresponding Master Site Infrastructure Improvements (MSII) construction, said  
 12 approved-financing is memorialized in writing, typically by an amendment to the PSDA. For  
 13 example, both the Fourth Amendment and Fifth Amendment reference the then City-approved  
 14 "Revised Recapitalization" (see, Fourth Amendment, ¶ 2) and City-approved "Recapitalization  
 15 Lenders" (see, Fifth Amendment, Recital K & ¶ 2).

16     80.     If SDC (or any Developer entity) fails to perform under the PSDA, as amended,  
 17 including by failing to notify and/or obtain financing approval for any Project Component or  
 18 corresponding Master Site Infrastructure Improvements, Section 501 of the Original PSDA  
 19 generally provides that (1) prior to the City initiating any proceedings against SDC in connection  
 20 with any "Default" (as defined), the City must deliver to SDC written notice of the Default, and  
 21 (2) Developer shall not be considered in such Default if SDC cures such Default in thirty (30) days  
 22 from the receipt of such notice or commences to cure said Default within thirty days from the  
 23 receipt of such notice.

24                   **City Learns of Developer Defaults on Loans, Leading To Foreclosure Proceedings And A**  
 25                   **Multi-Party Memorandum of Understanding and Agreement to Address Potential Default**  
 26                   **by Developer under the Fifth Amendment and Subsequent Developer Actions**

27     81.     As set forth in Recital K and Section 2 of the Fifth Amended, entered into  
 28 November 16, 2023, the summary for the amendment revolved around SDC disclosing to the City

1 that, subsequent to the approval of the Fourth Amendment and during construction of the Luxury  
 2 Hotel, Lifestyle Hotel, Permanent Golf Clubhouse, and Conference and Shared Services Facility  
 3 Project Components and their appurtenant Master Site Infrastructure Improvements (MSII), the  
 4 City-approved “Lender” from the Fourth Amendment no longer was included in the “Revised  
 5 Capitalization” approved by the City under the Fourth Amendment and that construction had  
 6 halted on these Project Components and MSII from SDC’s failure to pay contractors and  
 7 subcontractors. To address the situation, SDC proposed, and the City approved *vis-à-vis* the Fifth  
 8 Amendment, the following creditors and financing/funding sources: First Pathway Partners for  
 9 EB-5 financing (which had closed on December 9, 2022), Keillor Capital, Silver Arch Capital,  
 10 Lieef Real Estate Energy Partners for C-Pace funding, and Ziegler Investment Banking. These  
 11 creditors, referred to as the “Recapitalization Lenders” for “Recapitalization Loans,” were  
 12 specifically approved by the City to pay unpaid debts to contractors, subcontractors, and existing  
 13 loan with Poppy Bank (“Poppy”) secured by a deed of trust against portions of the SDC-Owned  
 14 Properties. Significantly, SDC had an obligation to close on the Recapitalization Loans by  
 15 January 1, 2024, with an outside closing “drop dead” deadline of June 30, 2024, by which closing  
 16 on all Recapitalization Loans had to occur so construction of these Project Components and  
 17 related MSII would resume by that date. (*See*, Fifth Amendment, § 3 & Ex. A, p.4 [Schedule of  
 18 Performance].)

19       82.     SDC failed to and did not close by June 30, 2024, on the City-approved  
 20 Recapitalization Loans, and as of June 30, 2024, was in default under the PSDA.

21       83.     Even before the June 30, 2024 deadline, but after the November 16, 2023 effective  
 22 date of the Fifth Amendment, the City started to receive information that significant amounts of  
 23 debt from equity investors (unsecured creditors) and one other unknown and unapproved  
 24 apparently secured creditor, Cypress Point Holdings, LLC (“Cypress”), remained unpaid and  
 25 owing, but SDC never informed the City during negotiations and approval date of the Fifth  
 26 Amendment of these significant amounts of debt owed by SDC.

27       84.     At all relevant times for the allegations in this Complaint, the Original PSDA, all  
 28 amendments and implementing agreements, including the Fifth Amendment, and the Development

1 Agreement, have been and remain public records subject to review and inspection to anyone,  
 2 including Cypress and the Unknown and Unapproved Equity Investors named as Defendants (see  
 3 Paragraph 39, above). As such, Cypress and the Unknown and Unapproved Equity Investors had  
 4 sufficient time to perform due diligence into any recorded instruments, public records (including  
 5 the PSDA), and any other public documents of the City, which had restrictions on the SDC-  
 6 Owned Properties and set forth the City's rights and remedies to protect the City's interest in  
 7 having the project developed and completed.

8       85.     In this regard, the City was not given the opportunity to approve, and did not  
 9 approve, for any Project Component or corresponding Master Site Infrastructure Improvements,  
 10 the funding apparently solicited by SDC and provided by the Unknown and Unapproved Equity  
 11 Investors, nor provided by Cypress originally in the form of an equity investment (unsecured) but  
 12 then subsequently, pursuant to a settlement agreement between SDC and Cypress to which the  
 13 City was not made aware of, in the form of a loan secured by a real property interest in a portion  
 14 of the SDC-Owned Properties. Notably, the City was not given any notice by SDC or the  
 15 opportunity to approve the recordation of the Cypress Deed of Trust.

16       86.     Nonetheless, on or about January 10, 2024, the City received that certain  
 17 "Important Notice/Notice of Default and Election to Sell Under Deed of Trust," recorded in the  
 18 Recorder's Office as Document No. 2023-0363986 ("Cypress Default Notice"). The Cypress  
 19 Default Notice was caused to be recorded by Cypress, a non-party to this litigation but a party to  
 20 that certain MOU (defined below), and Cypress and Poppy Bank are relevant to the immediate  
 21 actions taken by the City in response to SDC's failure to disclose material information concerning  
 22 the amount of unpaid debt involved with the construction of the various Project Components.

23       87.     Upon learning of and receiving Cypress Default Notice, the City immediately  
 24 contacted SDC to determine what had transpired to date in connection with a debt-secured interest  
 25 held by Cypress. Among other responses in order to require SDC to immediately address the  
 26 Cypress Default Notice, SDC and the City entered into that certain Agreement to Waive and  
 27 Modify Notice and Cure Period, dated February 7, 2024 ("Notice and Cure Agreement"), a PSDA  
 28 implementing agreement whereby SDC agreed to waive the explicit notice and cure requirements

1 of Section 501 of the PSDA, and to modify those provisions such that the City only needed to give  
 2 SDC seven (7) days, instead of thirty (30) days, to cure any default relating to the Cypress Default  
 3 Notice. If SDC failed to cure within seven (7) days, under the Notice and Cure Agreement, the  
 4 City has the right to institute any proceedings pursuant to the PSDA. A true and correct copy of  
 5 the Notice and Cure Agreement is attached in the COE as **Exhibit 13**.

6       88. Since the City received the Cypress Default Notice, the City received a notice from  
 7 Cypress that it intended to pursue a foreclosure sale and scheduled a foreclosure sale on a portion  
 8 of the SDC-Owned Properties. Additionally, another secured creditor, Poppy, who was to be paid  
 9 off by SDC with the closing of the Recapitalization Loans pursuant to the Fifth Amendment, also  
 10 issued a notice of its intent to pursue a foreclosure sale and scheduled a foreclosure sale, on a  
 11 portion of the SDC-Owned Properties.

12       89. In response to the Cypress foreclosure and auction sale notice, the City  
 13 immediately issued to SDC a NOTICE OF DEFAULT, dated April 17, 2024, requiring SDC  
 14 within seven (7) days to cure the default by either (a) paying off to Cypress all debts to remove  
 15 from title Cypress Default Notice and prevent any future foreclosure auction sale, or (b) enter into  
 16 a forbearance agreement with Cypress and any other lienholders with a deed of trust to delay any  
 17 foreclosure auction sale to allow for payments of SDC's debt owed to Cypress. A true and correct  
 18 copy of the City's April 17, 2024 Notice of Default (and foreclosure auction sale notice from  
 19 Cypress) is attached in the COE as **Exhibit 14**.

20       90. SDC failed to cure within seven (7) days its default as provided in the City's April  
 21 17, 2024 Notice of Default, and the City memorialized that failure by that certain FAILURE TO  
 22 CURE NOTICE and CONFIRMATION OF DEFAULT, dated April 25, 2024, in which, among  
 23 other provision, the City asserted it intends to exercise its rights under the PSDA as outlined in the  
 24 April 17, 2024 Notice of Default, to protect the City's interests in the SDC-Owned Properties and  
 25 the resumption and completion of the development and construction of the Project Components  
 26 and appurtenant MSII. A true and correct copy of the City's April 25, 2024 Failure to Cure Notice  
 27 and Confirmation of Default is attached in the COE as **Exhibit 15**.

28       91. Similarly, and in response to Poppy foreclosure and auction sale notice, the City

1 immediately issued to SDC a NOTICE OF DEFAULT, dated May 14, 2024, requiring SDC within  
2 seven (7) days to cure the default by either (a) paying off to Poppy all debts to remove from title  
3 Poppy's default notices and prevent any future foreclosure auction sale, or (b) enter into a  
4 forbearance agreement with Poppy, Cypress, and any other lienholders with a deed of trust to  
5 delay any foreclosure auction sale to allow for payments of SDC's debt owed to Cypress. A true  
6 and correct copy of the City's May 14, 2024 Notice of Default (and foreclosure auction sale notice  
7 from Poppy) is attached in the COE as **Exhibit 16**.

8       92. Plaintiff is informed and believes, and thereupon alleges, that SDC has not paid off  
9 either Poppy or Cypress for the entire amounts of the debts owed to them and the grounds for their  
10 respective notices of foreclosure auction sales as of the date of this Complaint.

11       93. Additionally, after the City received the Cypress Default Notice, the prime  
12 contractors that SDC has engaged for the development of the Talus (SilverRock) project, RD  
13 Olson Construction Inc. (“Olson”) and Granite Construction Company (“Granite”), had indicated  
14 that they expected full payment on remaining unpaid amounts for work completed and subject to  
15 mechanics liens recorded against all or portion of the SDC-Owned Properties and the subject of a  
16 pending lawsuit in Riverside County Superior Court (lead case number CVPS2301220).  
17 Moreover, Montage North America, LLC (“Montage”), the parent company for the Montage and  
18 Pendry branded hotels (*i.e.*, the “Luxury Hotel” and “Lifestyle Hotel” Project Components,  
19 respectively), have been engaged to have the project “jump start” given that construction had  
20 ceased for almost one year due to SDC’s failure to pay the contractors.

# The Memorandum of Understanding Relating to Default and Developer Requirements (Purchase, Sale, and Development Agreement)

23        94. With foreclosures looming and pursuant to the City authority to protect its interests  
24 under the PSDA, the City and multiple parties—including SDC (and its affiliated entities) entered  
25 into the Memorandum of Understanding and Agreement relating to Default and Developer  
26 Requirements (Purchase, Sale, And Development Agreement) [Implementing Agreement], dated  
27 May 24, 2024 (“**MOU**”) in order to the SDC-Owned Properties from foreclosure and to provide a  
28 means to move forward with resuming project construction and completion of the project. A true

1 and correct copy of the MOU is attached in the COE as **Exhibit 17**.

2       95. In addition to the Defendant SDC and Developer,<sup>2</sup> the MOU is signed by the City,  
 3 Cypress and Poppy, contractors Olson and Granite, Montage, and Christopher M. George  
 4 (“CMG”) (collectively, the “**MOU Parties**”).

5       96. CMG, the founder of a mortgage bank and known for responsible lending practices,  
 6 expressed interest to the City and other MOU Parties that CMG may be willing to pay the debts in  
 7 exchange for having the right to have the development project assigned to CMG from SDC.

8       97. The MOU may be summarized as follows: (1) There would be forbearance on  
 9 Cypress’ and Poppy’s foreclosures, such that action sales would be postponed to allow SDC and  
 10 then CMG to perform under the MOU; (2) SDC had until June 30, 2024 to close on the  
 11 Recapitalization Loans (as defined and identified in the Fifth Amendment), which would have  
 12 allowed SDC to pay all debts owed by SDC and resume and complete construction of the project;  
 13 (3) if SDC failed to timely close by June 30, 2024, then CMG has specified rights and obligations  
 14 for approximately two months, including the obligations to pay off the secured creditors and  
 15 mechanics liens, while gaining the right to have the project and development agreements with the  
 16 City assigned to CMG.

17       98. Under the MOU, SDC and its affiliates agreed that if SDC failed to obtain funding,  
 18 “SDC shall assign (per section 4.2) any and all interest in the PSDA, Development Agreement,  
 19 and all other valid agreements relating to the construction, completion, and operation of the Talus  
 20 project (including the hotel operator agreements), with the exception of the Olson and Granite  
 21 agreements and convey fee simple ownership interest to the Developer-Held Properties [*i.e.*, SDC-  
 22 Owned Properties]” to CMG. (See MOU, § 4.1, p. 4.)

23       99. As alleged above, SDC failed to obtain funding to pay off all the debts owed by  
 24 SDC by June 30, 2024, and as of 11:59 p.m. Pacific Standard Time on June 30, 2024, SDC was  
 25 again in default under the PSDA.

26       ///

27

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28       <sup>2</sup> Signatories to the MOU are Defendants SDC, Robert Green Company, Green, RGC, SRPI,  
 SRL 2, SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789.

1       100. On July 1, 2024, the City issued to SDC another NOTICE OF DEFAULT under the  
2 PSDA, and specifically the Fifth Amendment, because SDC failed to close on the Recapitalization  
3 Loans by June 30, 2024. The Notice of Default gave SDC thirty (30) days to close on the  
4 Recapitalization Loans pursuant to the 30-day cure period in Section 501 of the PSDA, and the  
5 Notice of Default expressly provided that, as long as SDC complies with its obligations under the  
6 MOU, then SDC would be deemed as taking actions to cure the default. Concurrently, the City  
7 retained any and all rights and remedies, including judicial intervention and enforcement of its  
8 rights under the MOU, Notice and Cure Agreement, and the PSDA (including the Fifth  
9 Amendment). A true and correct copy of the July 1, 2024 Notice of Default is attached in the  
10 COE as **Exhibit 18**.

11        101. Also on July 1, 2024, CMG exercised its rights to purchase and assume the  
12 Developer's rights and obligations by sending the MOU Parties, including the Developer  
13 Defendants, CMG's Notice Of Exercising Rights And To Proceed. A true and correct copy of the  
14 July 1, 2024 CMG Notice Of Exercising Rights And To Proceed is attached in the COE as  
15 **Exhibit 19.**

16 || 102. The MOU remains in place and in full force and effect.

**Unauthorized Fraudulent Deeds of Trust and Mechanics Liens Recorded  
Against the SDC-Owned Properties to Thwart the MOU**

19       103. The City is informed and believes, and on that basis alleges, that SDC and its  
20 affiliates have over-leveraged SDC's holdings and valuation of the Talus project, and have many  
21 equity investors with unsecured interests, including the Unknown and Unapproved Equity  
22 Investors named as Defendants (above), none of which the City approved in accordance with the  
23 requirements of the PSDA (as explained above). The City also is informed and believes, and on  
24 that basis alleges, that some equity investors do not even know about the other equity investors.

25       104. The City is informed and believes, and on that basis alleges, that SDC and its  
26 affiliates are now intentionally and fraudulently trying to frustrate and thwart the PSDA and MOU  
27 and have encumbered all or portions of the SDC-Owned Properties with unenforceable mechanics  
28 liens and unauthorized deeds of trust without the City's approval or consent in violation of the

1 PSDA. (See, Original PSDA §§ 603.1, 311.1 & 211.)

2       105. In the MOU, SDC and its affiliates represented that it has “no knowledge of any  
 3 agreement with third parties that would prevent a Party from performing its obligations under this  
 4 Agreement.” (See MOU, § 4.6.)

5       106. Contrary to this representation, on or about July 1, 2024, SDC executed a  
 6 promissory note in the principal amount of **\$20,070,000** in favor of Defendant Axia, which is  
 7 purported to be secured by a third deed of trust against a portion or all of the SDC-Owned  
 8 Properties, which was recorded on July 2, 2024 as Document No. 2024-0195411 in the Recorder’s  
 9 Office (“Axia Deed of Trust”).

10      107. On July 1, 2024, the Robert Green Company recorded a Mechanics Lien in the  
 11 amount of **\$5,557,000** for work and/or materials described as “DEVELOPMENT  
 12 MANAGEMENT SERVICES (OVERSEE PROJECT DESIGN AND CONSTRUCTION)” of the  
 13 Montage Residences consisting of Lots 1-29 & C, D, E, G, H Conchilla Court [*i.e.*, Lots 1 through  
 14 29 as shown on Final Tract Map No. 37730]. The Mechanics Lien was recorded on July 1, 2024  
 15 as Document No. 2024-0194774 in the Recorder’s Office.

16      108. On July 1, 2024, Robert Green Residential, Inc., an affiliate of SDC, recorded a  
 17 Mechanics Lien in the amount of **\$2,610,323** for work and/or materials described as “GENERAL  
 18 CONTRACTING SERVICES TO COMPLETE THE (29) MONTAGE RESIDENCES”  
 19 consisting of Lots 1-29 & C, D, E, G, H Conchilla Court [*i.e.*, Lots 1 through 29 as shown on Final  
 20 Tract Map No. 37730]. The Mechanics Lien was recorded on July 1, 2024 as Document No.  
 21 2024-0194775 in the Recorder’s Office.

22      109. On July 2, 2024, the Robert Green Company recorded a Mechanics Lien in the  
 23 amount of **\$772,734** for work and/or materials described as “DEVELOPMENT MANAGEMENT  
 24 SERVICES (OVERSEE PROJECT DESIGN AND CONSTRUCTION)” of the Meeting  
 25 Conference and Shared Services Project, located at 52-005 Talus Way (formerly SilverRock Way)  
 26 APN 777-490-072 & 076, La Quinta, CA 92253. The Mechanics Lien was recorded on July 2,  
 27 2024 as Document No. 2024-0196344 in the Recorder’s Office.

28      110. On July 2, 2024, the Robert Green Company recorded a Mechanics Lien in the

1 amount of **\$25,059** for work and/or materials described as “DEVELOPMENT MANAGEMENT  
 2 SERVICES (OVERSEE PROJECT DESIGN AND CONSTRUCTION)” of the Pendry Hotel  
 3 Project, located at 52-155 Talus Way (formerly SilverRock Way) APN 777-490-073, 074, 075 &  
 4 080 La Quinta, CA 92253. The Mechanics Lien was recorded on July 2, 2024 as Document No.  
 5 2024-0196346 in the Recorder’s Office.

6       111. On July 2, 2024, the Robert Green Company recorded a Mechanics Lien in the  
 7 amount of **\$358,373** for work and/or materials described as “DEVELOPMENT MANAGEMENT  
 8 SERVICES (OVERSEE PROJECT DESIGN AND CONSTRUCTION)” of the Golf Clubhouse  
 9 Project, located at 52-245 Talus Way (formerly SilverRock Way) APN 777-490-077, 078 & 079  
 10 La Quinta, CA 92253. The Mechanics Lien was recorded on July 2, 2024 as Document No. 2024-  
 11 0196347 in the Recorder’s Office.

12       112. On July 2, 2024, the Robert Green Company recorded a Mechanics Lien in the  
 13 amount of **\$144,702** for work and/or materials described as “DEVELOPMENT MANAGEMENT  
 14 SERVICES (OVERSEE PROJECT DESIGN AND CONSTRUCTION)” of the Pendry  
 15 Residences and Clubhouse Project Buildings 1-11 & Clubhouse, APN 777-490-046, La Quinta,  
 16 CA 92253. The Mechanics Lien was recorded on July 2, 2024 as Document No. 2024-0196348 in  
 17 the Recorder’s Office.

18       113. None of the Developer Defendants, not even Green himself, notified the City of  
 19 any actions taken or planned to be taken, starting July 1, 2024, that were intended to either (i)  
 20 allegedly convert unapproved and unknown equity interests in the Talus project to a “debt  
 21 interest” secured by a deed of trust, or (ii) allegedly claim mechanics liens against SDC-Owned  
 22 Properties for work allegedly completed or to be completed by SDC (or any Defendant  
 23 Developer). In fact, the City learned about the July 1 and July 2, 2024 recorded instruments,  
 24 including the purported Axia Deed of Trust and purported mechanics liens recorded by the  
 25 Defendant Developer against its own real property, through communications from other MOU  
 26 Parties.

27       114. Upon learning of Developer’s actions, on July 10, 2024, the City issued to SDC a  
 28 CEASE AND DESIST DEMAND FOR UNAUTHORIZED TRANSACTIONS (“July 10, 2024

1 Cease And Desist Demand"), in violation of the PSDA and MOU. The Cease and Desist Demand  
 2 immediately commanded SDC and its affiliates, including The Robert Green Company, to cease-  
 3 and-desist executing and recording deeds of trust, mortgages, mechanics liens, fixture filings,  
 4 assignments of rents, or any other instruments purporting to evidence a secured interest in the  
 5 SDC-Owned Properties. Additionally, the City demanded that SDC and its Developer affiliates,  
 6 including The Robert Green Company, immediately terminate and release, and remove from title  
 7 all purported secured interests described in the mechanics lien and deed of trust recorded on July  
 8 1, 2024 and July 2, 2024. A true and correct copy of the July 10, 2024 Cease And Desist Demand  
 9 (with attached unauthorized recorded documents) is attached in the COE as **Exhibit 20**.

10       115. Instead, SDC and its affiliates have blatantly disregarded the City's cease-and-  
 11 desist letter. The City is informed and believes, and on that basis alleges, that SDC stated that it  
 12 does not intend to comply with the City's Cease And Desist Demand. A true and correct copy of  
 13 an e-mail communication from Defendant Green, sent to City Manager Jon McMillen, defying the  
 14 Cease And Desist Demand is attached in the COE as **Exhibit 21**.

15       116. After receiving the e-mail communication from Defendant Green defying the Cease  
 16 And Desist Demand, Defendant Green subsequently communicated to City Manager Jon  
 17 McMillen that the amounts identified in the Mechanics Liens recorded by the Robert Green  
 18 Company were incorrect, but regardless of any incorrect amounts, the City is informed and  
 19 believes, and on that basis alleges, that the Mechanics Liens, regardless of purported amount,  
 20 recorded by the Robert Green Company against any portion or all of the SDC-Owned Properties  
 21 are unenforceable and unauthorized.

22       117. Indeed, even after the July 10, 2024 Cease And Desist Demand from the City, the  
 23 City received information, once again Contrary to SDC's representation in Section 4.6 of the  
 24 MOU and without the approval from the City required under the PSDA, that SDC (or SDC-  
 25 affiliated Developer Defendant) had executed and recorded deeds of trust purported to secure  
 26 indebtedness owed to the Unknown and Unapproved Equity Investors -- all of which were  
 27 executed and recorded against the SDC-Owned Properties ***while SDC was and remains in default***  
 28 -- including the following:

1                   a.         A Second Deed of Trust And Fixture Filing With Assignment Of Rents,  
 2 dated July 3, 2024, and recorded on July 5, 2024, as Document No. 2024-0199178 in the  
 3 Recorder's Office, purportedly securing a promissory note of indebtedness for the following:  
 4 (i) \$1,446,086 for Defendant Parekh, (ii) \$7,015,701 for Defendant McCoy, (iii) \$749,559 for  
 5 Defendant Billings Realty, (iv) \$7,169,256 for defendant Heuser, (v) \$2,109,250 for Defendant  
 6 Green, and (vi) \$2,473,066 for Eric and Hector D Beranek ("Parekh et al. Deed of Trust");

7                   b.         A Second Deed of Trust And Fixture Filing With Assignment Of Rents,  
 8 dated July 3, 2024, and recorded on July 5, 2024, as Document No. 2024-0199180 in the  
 9 Recorder's Office, purportedly securing a promissory note of indebtedness for \$3,816,000 for  
 10 Defendant Traub Family Trust ("Traub Family Trust Deed of Trust");

11                  c.         A Second Deed of Trust And Fixture Filing With Assignment Of Rents,  
 12 dated July 3, 2024, and recorded on July 5, 2024, as Document No. 2024-0199181 in the  
 13 Recorder's Office, purportedly securing a promissory note of indebtedness for a total of  
 14 \$3,816,000 for the following Defendants: Heuser, SVR Capital, Kurtin Family Trust,  
 15 Kevin/Theresa Green Family Trust, Duclos, Holker IRA, Cimarusti, Fruhwirth, Parr, Welk,  
 16 LTMDP, Leitstein, Hoehn, Goetz, Fredricks, and Mack Trust ("Heuser et al. Deed of Trust"); and

17                  d.         The Axia Deed of Trust, Parekh et al. Deed of Trust, Traub Family Trust  
 18 Deed of Trust, and Heuser et al. Deed of Trust are collectively referred to as the "Unauthorized  
 19 Deeds of Trust," as none of the purported creditors or their respective funding contributions were  
 20 approved by the City, all in violation of the PSDA, and all were entered into and recorded after  
 21 SDC was in default and in complete contradiction to the City's July 1, 2024 Notice of Default and  
 22 the MOU.

23                 118.    The City is informed and believes, and on that basis alleges, that SDC and its  
 24 affiliates have, since July 1, 2024, and continue and/or intend to continue, intentionally and  
 25 fraudulently, to try to frustrate and thwart the PSDA and MOU and have encumbered all or  
 26 portions of the SDC-Owned Properties with unenforceable mechanics liens and unauthorized  
 27 deeds of trust without the City's approval or consent in violation of the PSDA.

28                 119.    As such, immediate judicial intervention and remedies are necessary and pursued

1 by the City in accordance with its rights under the PSDA, as amended, and MOU.

2                   **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

3                   **(Against Defendants SDC, Robert Green Company, Green, Schuster, RGC, SRPI, SRL 2,  
4                   SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789, and DOES 1-50)**

5                   120. The City realleges and incorporates herein all previous allegations of this  
6 Complaint by reference as if fully set forth herein.

7                   121. As alleged above, the City and SDC entered into the PSDA (as amended through  
8 the Fifth Amendment to date). Pursuant to the PSDA, including Sections 603.1, 211, 304.4, and  
9 311.1, SDC (or any Developer entity) was required to receive the City's approval prior to  
10 obtaining and utilizing any financing for the construction of the project on the SDC-Owned  
11 Properties.

12                  122. Additionally, both the Phase 1A Property Grant Deed and Phase 1B Property Grant  
13 Deed include a similar restriction on the Grantee's ability to transfer the properties by prohibiting  
14 any transfer of ownership of the properties, unless the transfer was the result of a transaction or  
15 agreement that was approved pursuant to Section 603 of the PSDA. (See Phase 1A Property Grant  
16 Deed, § 4; Phase 1B Property Grant Deed, § 4.)

17                  123. Defendants breached the MOU, PSDA and Phase 1A Property and Phase 1B  
18 Property Grant Deeds through the execution and recordation of the Unauthorized Deeds of Trust.

19                  124. Defendants also breached the Fifth Amendment by failing to close on the  
20 Recapitalization Loans by June 30, 2024.

21                  125. As alleged above, Defendants and the City entered the MOU to save the SDC-  
22 Owned Properties from foreclosure and to provide a means to move forward with resuming project  
23 construction and completion of the project.

24                  126. Under the MOU, SDC and its affiliates agreed that if SDC failed to obtain funding,  
25 "SDC shall assign (per section 4.2) any and all interest in the PSDA, Development Agreement,  
26 and all other valid agreements relating to the construction, completion, and operation of the Talus  
27 project (including the hotel operator agreements), with the exception of the Olson and Granite  
28 agreements and convey fee simple ownership interest to the Developer-Held Properties [i.e., the

1 SDC-Owned Properties]" to CMG. (See MOU, § 4.1, p. 4.)

2       127. In the MOU, SDC and its affiliates represented that it has "no knowledge of any  
 3 agreement with third parties that would prevent a Party from performing its obligations under this  
 4 Agreement." (See MOU, § 4.6.)

5       128. Defendants breached the MOU by encumbering the SDC-Owned Properties with  
 6 unauthorized mechanics liens and the Unauthorized Deeds of Trust without the City's approval or  
 7 consent in violation of the PSDA. (See Original PSDA §§ 603.1, 311.1 & 211.)

8       129. The City has performed all conditions, covenants, and promises required of the  
 9 City under the PSDA, the Phase 1A Property and Phase 1B Property Grant Deeds, and the MOU.

10      130. As a proximate result Defendants' breach, the City has been damaged because it  
 11 will lose the bargained for benefit and contractual right of selecting the proper developer for the  
 12 project, and giving the City the ability to review and approve any financing agreements that would  
 13 materially affect and encumber the SDC-Owned Properties. Likewise, the City has been forced to  
 14 bring this immediate lawsuit to protect its interests in controlling the City-authorized developer  
 15 that would have ownership and ultimate development of the SDC-Owned Properties. As such, the  
 16 City will incur attorney's fees and costs in prosecuting this action.

17      131. Additionally, the City will suffer damages from the resulting delay in developing  
 18 the Talus project, which prevents the City from generating new revenues from the development.  
 19 In 2014, the City's new revenues from the development was estimated to be **\$47,700,000** over a  
 20 15-year period. The daily amount of revenues estimated as of 2014 was \$8,712.33.<sup>3</sup> Adjusting for  
 21 inflation based on the Consumer Price Index, the daily amount of new revenues estimated as of  
 22 May 2024 is **\$11,586.96** per day. The City has suffered damages and will continue to suffer  
 23 damages in a sum according to proof.

24      ///

25      ///

26      ///

27

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28      <sup>3</sup> This amount was calculated by dividing \$47,700,000 by 15 years, which equals \$3,180,000 per  
 year or \$8,712.33 per day (\$3,180,000 ÷ 365 days).

## **SECOND CAUSE OF ACTION FOR FRAUD**

**(Against SDC, Robert Green Company, Green, Schuster, RGC, SRPI, SRL 2,  
SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789, and DOES 1-50)**

4       132. The City realleges and incorporates herein all previous allegations of this  
5 Complaint by reference as if fully set forth herein.

6        133. As a condition of the PSDA, the Phase 1A Property Grant Deed, and the Phase 1B  
7        Property Grant Deed, Green, as an authorized agent and/or alter ego of Defendants, made material  
8        misrepresentations to the City that were in fact false and misleading. Specially, Green represented  
9        to the City in the PSDA and Phase 1A Property and Phase 1B Property Grant Deeds that  
10      Defendants would obtain the City's approval prior to obtaining and utilizing any financing for the  
11      construction of the project on the SDC-Owned Properties or transferring any interests in the SDC-  
12      Owned Properties.

13        134. In entering the PSDA and Phase 1A Property and Phase 1B Property Grant Deeds,  
14 Defendants knew their representations were false and/or made with reckless disregard of the truth.

135. Defendant Developer did not intend to obtain the City's prior approval before  
136 encumbering the SDC-Owned Properties. Defendant Developer clearly did not intend to obtain  
137 the City's prior approval by failing to obtain the City's prior approval regarding the Unauthorized  
138 Deeds of Trust.

19        136. As alleged above, the City and MOU Parties, including SDC and affiliated  
20 Developer entities, subsequently entered the MOU to save the SDC-Owned Properties from  
21 foreclosure and to provide a means to move forward with resuming project construction and  
22 completion of the project.

23        137. Under the MOU, SDC and its affiliates represented that, if SDC failed to obtain  
24 funding, “SDC shall assign (per section 4.2) any and all interest in the PSDA, Development  
25 Agreement, and all other valid agreements relating to the construction, completion, and operation  
26 of the Talus project (including the hotel operator agreements), with the exception of the Olson and  
27 Granite agreements and convey fee simple ownership interest to the Developer-Held Properties  
28 [*i.e.*, SDC-Owned Proeprties]” to CMG. (See MOU, § 4.1, p. 4.)

1       138. In the MOU, SDC and its affiliates represented that it has “no knowledge of any  
2 agreement with third parties that would prevent a Party from performing its obligations under this  
3 Agreement.” (See MOU, § 4.6.)

4       139. Defendant Developer clearly had no intent of transferring all SDC's interests in the  
5 PSDA, Development Agreement, and all other valid agreements and did not intend to convey a fee  
6 simple ownership interest in the SDC-Owned Properties to CMG. To thwart the MOU,  
7 Defendants intentionally encumbered the SDC-Owned Properties with unenforceable mechanics  
8 liens and the Unauthorized Deeds of Trust without the City's approval or consent in violation of  
9 the PSDA. (See Original PSDA §§ 603.1, 311.1 & 211.)

10 140. The City reasonably and justifiably relied on Defendants' representations.

11        141. As a direct and proximate result of Defendants' misrepresentations and fraud, the  
12 City has been damaged in an amount to be determined by this Court.

13        142. The acts and conduct of Defendant Developer, and each of them, were done in a  
14 manner with conscious disregard of the City's rights. Defendant Developer intentionally made  
15 false misrepresentations to induce the City to enter the Fifth Amendment as well as the PSDA,  
16 Development Agreement, Phase 1A Property and Phase 1B Property Grant Deeds, and MOU with  
17 Defendant Developer. Defendants repeatedly engaged in this pattern of behavior for their own  
18 benefit with a specific intent to defraud and injure the City. Accordingly, such malevolent actions  
19 constitute fraud, oppression, and malice under Civil Code section 3294. Hence, the City is entitled  
20 to punitive and exemplary damages.

### **THIRD CAUSE OF ACTION FOR SLANDER OF TITLE**

22 (Against SDC, Robert Green Company, Green, Schuster, RGC, SRPI, SRL 2, SR Lodging,  
23 SR Lifestyle, SR Luxury, RGC/PA789, all Unknown and Unapproved Equity Investors, and  
24 **DOES 1-50)**

143. The City realleges and incorporates herein all previous allegations of this  
Complaint by reference as if fully set forth herein.

27        144. The City conveyed both the Phase 1A Property and Phase 1B Property to SDC  
28 pursuant to the Phase 1A Property Grant Deed and Phase 1B Property Grant Deed. As part of

1 both those grant deeds, the City reserved the legal right to review and approve any financial  
 2 arrangements that could impact the ownership of the SDC-Owned Properties, and the City  
 3 recorded its interest to continue to enforce the terms of the PSDA on the SDC-Owned Properties.

4       145. The Phase 1A Property and Phase 1B Property are also subject to the Development  
 5 Agreement, which was recorded against the SDC-Owned Properties in general, and further  
 6 confirms that the PSDA (and its various amendments) would apply to the project and the real  
 7 property on which the project will be developed (including the Phase 1A Property and Phase 1B  
 8 Property) on an ongoing basis.

9       146. The City, therefore, has a legal interest in the SDC-Owned Properties in so far it  
 10 has the right to approve any potential transfer of the SDC-Owned Properties, or any financing  
 11 agreement that could result in a transfer of ownership of the SDC-Owned Properties to any  
 12 secured lender. As such, any such transfer or financing agreement that is not approved by the City  
 13 is without legal effect and is therefore voidable. Furthermore, SDC, as the Grantee of both the  
 14 Phase 1A Property and Phase 1B Property, lacked the legal authority to convey this City interest in  
 15 either property without the consent of the City.

16       147. The City is informed and believes, and based thereon alleges that the Unknown and  
 17 Unapproved Equity Investors, with SDC's consent, recorded the Unauthorized Deeds of Trust  
 18 without the City's consent, even though the Development Agreement, the PSDA, and the Phase  
 19 1A Property and Phase 1B Property Grant Deeds all include explicit language stating that the City  
 20 must approve such an arrangement before it can be recorded against the SDC-Owned Properties.  
 21 The City is further informed and believes, and based thereon alleges, that some of the unknown  
 22 defendants, specifically those additionally designated as Does 1 through 50, claim interests in the  
 23 SDC-Owned Properties adverse to the City as assignees and successors of the Unknown and  
 24 Unapproved Equity Investors or as unauthorized and unapproved transferees of an interest in a  
 25 portion or all of the SDC-Owned Properties.

26       148. The City is further informed and believes, and on that basis alleges that the  
 27 Unknown and Unapproved Equity Investors, SDC, and the other Developer entities had either  
 28 constructive or actual knowledge (or both) of the fact that the Unauthorized Deeds of Trust could

1 not be recorded without the City's consent because the parties were either party to the Phase 1A  
 2 Property and Phase 1B Property Grant Deeds or the PSDA, or because they had constructive  
 3 knowledge of the content of those documents due to the fact that the recorded Development  
 4 Agreement referenced the PSDA and because the Phase 1A Property and Phase 1B Property  
 5 Grand Deeds were recorded.

6       149. The City is informed and believes, and based thereupon alleges, that the  
 7 Unauthorized Deeds of Trust are false and cause doubt as to the title to the SDC-Owned  
 8 Properties, to which the City has the legal right to continue to review and approve any transactions  
 9 that could result in said properties to be conveyed from SDC (or any Developer entities) to other  
 10 parties.

11       150. The existence of the Unauthorized Deeds of Trust impairs the City's ability to  
 12 enforce its rights under the Phase 1A Property and Phase 1B Property Grant Deeds, the PSDA, the  
 13 Development Agreement, and the MOU.

14       151. SDC and its affiliates also recorded unenforceable and unauthorized mechanics  
 15 liens against the SDC-Owned Properties. The existence of these mechanics liens also impair the  
 16 City's ability to enforce its rights under the Phase 1A Property and Phase 1B Property Grant  
 17 Deeds, the PSDA, the Development Agreement, and the MOU.

18       152. As a result of SDC (and Developer entities), the Unknown and Unapproved Equity  
 19 Investors, and Does 1 through 50's aforementioned actions and failures to act, the City has been  
 20 forced to institute this action for slander of title, and the City has incurred and will continue to  
 21 incur attorneys' fees and costs in prosecuting this action.

22       153. The City has suffered damages and will continue to suffer damages in a sum  
 23 according to proof.

#### **FOURTH CAUSE OF ACTION FOR QUIET TITLE**

##### **(Against All Defendants)**

24       154. The City realleges and incorporates herein all previous allegations of this  
 25 Complaint by reference as if fully set forth herein.

26       155. The City conveyed both the Phase 1A Property and Phase 1B Property to SDC

1 pursuant to the Phase 1A Property Grant Deed and Phase 1B Property Grant Deed. As part of  
 2 both those grant deeds, the City reserved the legal right to review and approve any financial  
 3 arrangements that could impact the ownership of the SDC-Owned Properties, and also recorded its  
 4 interest to continue to enforce the terms of the PSDA on the SDC-Owned Properties.

5       156. The Phase 1A Property and Phase 1B Property are also subject to the Development  
 6 Agreement, which was recorded against the SDC-Owned Properties, and further confirms that the  
 7 PSDA (and its various amendments) would apply to the project and the real property on which the  
 8 project will be developed (including the SDC-Owned Properties) on an ongoing basis.

9       157. The City, therefore, has a legal interest in the SDC-Owned Properties in so far it  
 10 has the right to approve any potential transfer of the SDC-Owned Properties, or any financing  
 11 agreement that could result in a transfer of ownership of the SDC-Owned Properties to any  
 12 secured lender. As such, any such transfer or financing agreement that is not approved by the City  
 13 is without legal effect and is therefore void or voidable. Furthermore, SDC, as the Grantee of both  
 14 the Phase 1A Property and Phase 1B Property, lacked the legal authority to obtain financing for  
 15 any Project Component or corresponding Master Site Infrastructure Improvements resulting in a  
 16 secured interest in the SDC-Owned Properties without the consent of the City.

17       158. The Unknown and Unapproved Equity Investors with SDC's consent recorded the  
 18 Unauthorized Deeds of Trust without the City's consent even though the PSDA, the Development  
 19 Agreement by incorporating the PSDA, and the Phase 1A Property and Phase 1B Property Grant  
 20 Deeds all include explicit restrictive language stating that the City must approve such a financing  
 21 arrangement before a secured interest can be recorded against the SDC-Owned Properties. The  
 22 City is also informed and believes, and based thereon alleges that some of the unknown  
 23 defendants, specifically those additionally designated as Does 1 through 50, claim interests in the  
 24 SDC-Owned Properties adverse to the City as assignees and successors of the Unknown and  
 25 Unapproved Equity Investors or as unauthorized and unapproved transferees of an interest in a  
 26 portion or all of the SDC-Owned Properties.

27       159. The City is seeking to quiet title against the claims of SDC and the Unknown and  
 28 Unapproved Equity Investors, and each of them, and Does 1 through 50, inclusive, as follows:

1                   a.         The Unauthorized Deeds of Trust purports to secure the respective  
2 purported promissory notes of the respective Unknown and Unapproved Equity Investors against  
3 portions of the SDC-Owned Properties, title to which said properties are now held by SDC (or one  
4 of Developer's affiliated entities);

5                   b.         The Unknown and Unapproved Equity Investors, and each of them, and  
6 Does 1 through 50, inclusive, refuse to cancel or reconvey the Unauthorized Deeds of Trust;

7           c.       The City is informed and believes, on that basis alleges, that SDC maintains  
8 that the Unauthorized Deeds of Trust are legally enforceable, and were lawfully recorded against  
9 the impacted portions of the SDC-Owned Properties; and

10 d. The claims of these Defendants, and all of them, are without any right  
11 whatsoever, and such Defendants have no right, title, estate, lien or interest whatever in any  
12 portion of the SDC-Owned Properties.

13 e. SDC and its affiliates, including the Robert Green Company, have also  
14 recorded unenforceable and unauthorized mechanics liens on the SDC-Owned Properties and  
15 refuse to cancel these mechanics liens.

16        160. The City seeks to quiet title as to the SDC-Owned Properties as of June 30, 2024 –  
17 the date upon which SDC was in default under the Fifth Amendment.

18        161. As a result of Developer's, the Unknown and Unapproved Equity Investors, and  
19 Does 1 through 50's aforementioned actions and failures to act, the City has been forced to  
20 institute this action for quiet title and has incurred and will continue to incur attorneys' fees and  
21 costs in prosecuting this action.

**FIFTH CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

**23 (Against SDC, Robert Green Company, Green, Schuster, RGC, SRPI, SRL 2,**

**SR Lodging, SR Lifestyle, SR Luxury, RGC/PA789, and all Unknown and Unapproved  
Equity Investors)**

26       162. The City realleges and incorporates herein all previous allegations of this  
27 Complaint by reference as if fully set forth herein.

163. An actual controversy has arisen and now exists between the parties regarding their

1 respective rights, duties and obligations with respect to the SDC-Owned Properties. Specifically,  
2 the City contends that the Unauthorized Deeds of Trust were unlawfully recorded against portions  
3 of the SDC-Owned Properties for the reasons stated above and are therefore invalid and should be  
4 declared as null and void. Additionally, the City contends that the unenforceable and unauthorized  
5 mechanics lien recorded by the Robert Green Company and Robert Green Residential, Inc., are  
6 null and void because the liens cannot be held by the property owner under the Doctrine of  
7 Merger.

8        164. The City is informed and believes, and on that basis alleges, that the Defendants  
9 dispute these contentions and assert the Unauthorized Deeds of Trust and mechanics liens are  
10 valid and proper.

11           165. The City is further informed and believes, and on that basis alleges, that SDC and  
12 the Developer Defendants have failed and will continue to breach the Developer Defendant's  
13 obligations to cooperate in good faith and perform the Developer's obligations under the MOU,  
14 including the obligation to convey fee title of the SDC-Owned Properties in accordance with the  
15 MOU.

16        166. The City desires a judicial determination and decree, pursuant to Code of Civil  
17 Procedure section 1060, establishing the respective rights, duties and obligations of the parties  
18 with regard to the City's contentions and the above-described actions.

19       167. The City has no adequate remedy at law to prevent or mitigate this ongoing  
20 imminent harm and the actions described above, have exhausted all available remedies, and  
21 therefore issuance of declaratory and injunctive relief is necessary to restrain and enjoin  
22 Defendants, and all others acting in concert, from in any way seeking to encumber the SDC-  
23 Owned Properties without the City's prior approval, and to compel and enjoin the Developer  
24 Defendants to perform the Developer's obligations under the MOU.

## **PRAAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants as follows:

## 27 | On the First Cause of Action for Breach of Contract:

28 || 1. For general damages in an amount to be proved at trial;

1           2. For consequential damages in an amount to be proven at trial;

2 On the Second Cause of Action for Fraud:

3           1. For general damages in an amount to be proven at trial;

4           2. For special damages to be proven at trial;

5           3. For punitive damages in the sum to be proven at trial.

6 On the Third Cause of Action for Slander of Title:

7           1. For general damages in an amount to be proven at trial;

8           2. For special damages to be proven at trial;

9           3. For a judgment declaring the Unauthorized Deeds of Trust, and each of them, as  
10 void and of no force or effect.

11           4. For a judgment declaring the mechanics lien recorded by Defendants as void and of  
12 no force or effect.

13 On the Fourth Cause of Action for Quiet Title:

14           1. For a judgment declaring the Unauthorized Deeds of Trust as void and of no force  
15 or effect.

16           2. For a judgment declaring the mechanics lien recorded by Defendants as void and of  
17 no force or effect.

18 On the Fifth Cause of Action for Declaratory Relief:

19           1. For a judgment declaring the Unauthorized Deeds of Trust as void and of no force  
20 or effect.

21           2. For a judgment declaring the mechanics lien recorded by Defendants as void and of  
22 no force or effect.

23           3. For a judgment declaring Developer Defendants, and each of them, is in breach of  
24 their obligations under the MOU and shall perform according to the terms and conditions set forth  
25 therein.

26           4. For injunctive relief consistent with the judgments issued with the declaratory  
27 relief.

28           / / /

1     On all Causes of Action:

- 2       1.     For costs of suit against Defendants;  
3       2.     For attorneys' fees if and to the extent allowed by law;  
4       3.     For pre-judgment and post-judgment interest; and  
5       4.     For such further relief as the Court deems just and appropriate.

6 Dated: July 24, 2024

RUTAN & TUCKER, LLP  
WILLIAM H. IHRKE  
TRAVIS VAN LIGTEN  
SAMANTHA LAMM

7  
8 By: William H. Ihrke  
9 William H. Ihrke  
10 Attorneys for Plaintiff  
11 CITY OF LA QUINTA  
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